

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES**

In the Matter of the Disqualification of
Wade Roy Paulouski
4251 – 144th Lane
Andover, MN 55304

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson (the ALJ) conducted a hearing in this contested case proceeding beginning at 9:30 a.m. on Thursday, July 15, 2004, at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55410. The OAH record closed on July 15, 2004, when the hearing ended.

Kerri Stahlecker Hermann, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, represented the Minnesota Department of Human Services (the Department) at the hearing. Wade Roy Paulouski, 4251 – 144th Lane, Andover, MN 55304, was not represented by an attorney and appeared at the hearing on his own behalf.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions and Recommendation. The parties have ten calendar days after receiving this report in which to file any exceptions to the report with the Commissioner.^[1] Parties should contact the office of Kevin Goodno, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file exceptions. Since the Commissioner must issue his final order within ten working days from receipt of the Administrative Law Judge's recommendation,^[2] the parties are requested to file any exceptions as soon as possible.

STATEMENT OF THE ISSUE AND SUMMARY OF CONCLUSIONS

Whether the Department's determination, after the hearing in this matter, to set aside Mr. Paulouski's disqualification renders the issues in this proceeding moot and warrants dismissal of Mr. Paulouski's appeal.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The ALJ conducted a hearing in this matter beginning at 9:30 a.m. on July 15, 2004 at the Office of Administrative Hearings in Minneapolis. Both the Department and Mr. Paulouski presented evidence at the hearing on whether or not Mr. Paulouski presented a risk of harm to persons served by programs that are licensed by the Department.

2. After all of the evidence was presented at the hearing, the Department requested leave to stay further proceedings for the purpose of enabling the Department to reconsider Mr. Paulouski's request to set aside his disqualification in light of the evidence that was adduced at the hearing.

3. By letter dated July 15, 2004, the Department advised Mr. Paulouski of its determination that "[b]ased on the testimony you presented at the hearing, DHS has determined that you are not a risk of harm, and that your disqualification should be set aside." And by that letter, the Department set aside Mr. Paulouski's disqualification.^[3]

4. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

5. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law gives the Administrative Law Judge and the Commissioner authority to conduct this contested case proceeding and to make findings, conclusions, and recommendations or a final order, as the case may be.^[4]

2. The Department gave proper and timely notice of the hearing, and they have also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. Minnesota law also provides that “[t]he commissioner may set aside the disqualification . . . if the commissioner finds that the individual does not pose a risk of harm to any person served by the applicant, license holder, or registrant under section 144A.71, subdivision 1.”^[5] In determining whether or not an individual poses a risk of harm, the commissioner shall consider:

the nature, severity, and consequences of the event or events that lead to disqualification, whether there is more than one disqualifying event, the age and vulnerability of the victim at the time of the event, the harm suffered by the victim, the similarity between the victim and persons served by the program, the time elapsed without a repeat of the same or similar event, documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event, and any other information relevant to reconsideration.

4. The Department’s determination setting aside Mr. Paulouski’s disqualification renders the issues in this contested case proceeding moot, and there is no longer a basis nor a need for further proceedings on Mr. Paulouski’s appeal from the Department’s prior determination on November 4, 2003, not to set aside his disqualification

5. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

Based upon the these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge therefore RESPECTFULLY RECOMMENDS that this proceeding be DISMISSED as moot.

Dated this 23rd day of July 2004.

S/ Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

Reported: tape recorded (1 tape). No transcript prepared.

^[1] Minnesota Statutes, section 245A.07, subdivision 2a(b). Unless otherwise specified, all references to Minnesota Statutes are to the 2002 edition.

^[2] Minnesota Statutes, section 14.61.

^[3] A copy of that letter is attached to this report as Exhibit A.

^[4] Minnesota Statutes, sections 14.50, 14.57, 14.69, and 245A.01 through 245A.16.

^[5] *Id.*